

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERICK ELLIS,

Plaintiff,

-against-

DOCTOR KIM; DR. BENTIVEGNA;
CORRECTIONAL OFFICER BOYD,

Defendants.

23-CV-5309 (PMH)

ORDER OF SERVICE

PHILIP M. HALPERN, United States District Judge:

Plaintiff, who currently is incarcerated at Green Haven Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants denied him medical care. By order dated June 23, 2023, Chief Judge Laura Taylor Swain granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹ Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendants Dr. Kim, Dr. Bentivegna, and Officer Boyd through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

Service Process Receipt and Return form (“USM-285 form”) for these Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

Plaintiff may consult the legal clinic in this District that assists people who are parties in civil cases and do not have lawyers. The Clinic is run by a private organization called the New York Legal Assistance Group (“NYLAG”); it is not part of, or run by, the court (and, among other things, therefore cannot accept filings on behalf of the court, which must still be made by any *pro se* party through the Pro Se Intake Unit).

To receive limited-scope assistance from the Clinic, Plaintiff may mail a signed retainer and intake form to the NYLAG Pro Se Clinic at 40 Foley Square, LL22, NY, NY 10007. Once the paperwork is received, the Clinic will coordinate contact with the litigant. Once the paperwork is received, it may take up to two weeks for the Clinic to contact the litigant. Copies of the Clinic’s flyer, retainer, and intake form are attached to this order.

CONCLUSION

The Clerk of Court is instructed to issue summonses for Dr. Kim, Dr. Bentivegna, and Officer Boyd, complete the USM-285 forms with the addresses for these Defendants, deliver all documents necessary to effect service to the U.S. Marshals Service, and mail Plaintiff an information package.

Copies of the Clinic's flyer, retainer, and intake form are attached to this order.

SO ORDERED.

Dated: September 22, 2023
White Plains, New York

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

PHILIP M. HALPERN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Dr. Kim
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010
2. Dr. Bentivegna
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010
3. Officer Boyd
Green Haven Correctional Facility
594 Rt. 216
Stormville, NY 12582-0010